

The opinion in support of the decision being entered today is not binding precedent of the Board.

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Paper

By: Trial Section Merits Panel  
Board of Patent Appeals and Interferences  
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Filed: January 9, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Carol A. Spiegel)

LINDA B. COUTO, PETER C. COLOSI  
and XIAOBING QUIAN

Junior party,  
U.S. Patent 6,200,560  
U.S. Patent 6,221,349

MAILED

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PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

v.

LAWRENCE K. COHEN, S. KAYE SPRATT  
and LINDA B. COUTO

Senior party,  
Application 09/084,423

Patent Interference No. 105,094

Before: SCHAFER, TORCZON and SPIEGEL, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.

**JUDGMENT PURSUANT TO 37 CFR § 1.662(a)**

**I. Findings of fact**

1. This interference is between (a) U.S. Patents 6,200,560 and 6,221,349 to Couto et al., which are assigned to AVIGEN, INC. and (b) Application 09/084,423 of Cohen et al., which is assigned to CELL GENESYS, INC. (Paper 1).
2. A settlement agreement between the parties was submitted on October 28, 2003 (Paper 36).
3. Party Cohen submitted a copy of the Assignment of its entire right, title and interest in and to its involved application to the assignee of the involved Couto patent, AVIGEN, INC. According to party Cohen, the original Assignment was being simultaneously submitted to the US PTO Assignment Branch, for recordation. [Paper 39.]
4. "Pursuant to 37 C.F.R. § 1.662(a), Senior Party Cohen hereby requests adverse judgment in this interference. Attached to this paper as Tab A is an amendment deleting the claims in interference in favor of new claims 41-52, which do not interfere with the claims of the Couto patents in interference." [Paper 41.]
5. According to the records of the US PTO, its Assignment Branch has not yet recorded the assignment of the Cohen application to AVIGEN, INC.

**II. Discussion**

Based upon the copy of the submitted Assignment, we enter adverse judgment against senior party Cohen as to the subject matter of Count 1, the sole count of the interference. Party Cohen has not submitted any motion to amend the claims of its involved application. We do NOT enter the amendment attached as Tab A in Paper 41 and take NO position on whether the recited new claims 41-52 interfere with the involved Couto patent claims. Party Cohen should resubmit the proposed amendment to the Examiner once its application is returned to the examiner's jurisdiction. We leave entry of the proposed amendment to the discretion of the Examiner.

**III. Order**

Therefore, it is

ORDERED that judgment on priority as to Count 1, the sole count in the

interference, is awarded against senior party LAWRENCE K. COHEN, S. KAYE SPRATT and LINDA B. COUTO;

FURTHER ORDERED that senior party LAWRENCE K. COHEN, S. KAYE SPRATT and LINDA B. COUTO is not entitled to a patent containing claims 32-40 (corresponding to Count 1);

FURTHER ORDERED that a copy of this decision (Paper 42) be given a paper number and entered in the administrative record of Couto U.S. Patents 6,200,560 and 6,221,349 and of Cohen Application 09/084,423; and

FURTHER ORDERED that if there is a settlement agreement which has not been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

  
RICHARD E. SCHAFER )  
Administrative Patent Judge )  
  
  
RICHARD TORCZON )  
Administrative Patent Judge )  
BOARD OF PATENT )  
APPEALS AND )  
INTERFERENCES )  
  
  
CAROL A. SPIEGEL )  
Administrative Patent Judge )

cc (via fax and first class mail):

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